

**IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF MISSISSIPPI
DELTA DIVISION**

| | |
|----------------------------------|---------------------------------------|
| MACK ARTHUR BOWENS, | PETITIONER, |
| VS. | CIVIL ACTION NO. 2:00CR094-WAP |
| UNITED STATES OF AMERICA, | DEFENDANT. |

ORDER

This matter comes before the court upon Mack Arthur Bowens' October 10, 2008 motion for recusal [344]. After due consideration of the motion, the court finds as follows, to-wit:

On August 15, 2007 the court entered an Order denying the petitioner's original motion for recusal which is substantially the same as the instant motion for recusal. On September 8, 2008 the Fifth Circuit Court of Appeals dismissed the petitioner's appeal of the aforementioned Order and vacated the Order, concluding that this court lacked jurisdiction over the motion to recuse because there was nothing pending before this court at that time. The Fifth Circuit wrote that they "express no opinion about the merits of such a motion should a subsequent proceeding involving this Appellant and the judge arise...."

Since the Court of Appeals entered its Order, the petitioner filed a motion to vacate his sentence pursuant to 28 U.S.C. § 2255 on March 5, 2008. On October 10, 2008 the petitioner filed the instant motion for recusal. Given that there is now a pending matter before the court, this court would not run afoul of the Fifth Circuit's order by ruling upon the pending motion for recusal.

The court will reiterate its reasoning in its August 15, 2007 Order.

A district court's ruling on a motion for recusal is reviewed by a court of appeals for abuse

of discretion. *Andrade v. Chojnacki*, 338 F.3d 448, 454 (5th Cir. 2003). The standard for recusal is an objective one. 29 U.S.C. §§ 144, 455; *Trevino v. Johnson*, 168 F.3d 173 (5th Cir. 1999). The relevant inquiry is whether a “reasonable man, were he to know all the circumstances, would harbor legitimate doubts about the judge’s impartiality.” *U.S. v. Anderson*, 160 F.3d 231, 233 (5th Cir. 1998). The alleged bias must be personal, as distinguished from judicial, in nature. *U.S. v. Scroggins*, 485 F.3d 824, 830 (5th Cir. 2007). Furthermore, a motion for recusal may not be predicated upon the judge’s rulings in the instant case.” *Id.* at 830.

Contrary to the petitioner’s allegations, the court finds that recusal is unwarranted.

IT IS THEREFORE ORDERED AND ADJUDGED that Mack Arthur Bowens’ October 10, 2008 motion for recusal [344] is **DENIED**.

SO ORDERED this the 2nd day of June, A.D., 2009.

/s/ W. Allen Pepper, Jr.
W. ALLEN PEPPER, JR.
UNITED STATES DISTRICT JUDGE